

## **SETTLEMENT AGREEMENT**

### **RECITALS**

This Settlement Agreement is made and entered into between the U.S. Department of Housing and Urban Development ("HUD or "Department") and Grand Texas Homes, Inc. and its owners and officers ("Grand Homes") and Grand Title Company, LLC ("Grand Title"). Grand Homes and Grand Title shall collectively be referred to herein as the "Respondents." HUD and the Respondents shall be collectively referred to herein as the "Parties."

WHEREAS, the Secretary of the Department of Housing and Urban Development is authorized to enforce the Real Estate Settlement Procedures Act of 1974 ("RESPA" or "the Act"), 12 U.S.C. § 2601 *et seq.*, and its implementing regulations, 24 C.F.R. § 3500 *et seq.*;

WHEREAS, the Secretary is authorized by Section 19 of RESPA, 12 U.S.C. § 2617(c)(1), to investigate any facts, conditions, practices, or matters deemed necessary to determine whether any "person," as defined by Section 3(5) of the Act, has violated or is about to violate any provision of the Act or any rule or regulation prescribed pursuant thereto;

WHEREAS, Section 8(a) of RESPA, 12 U.S.C. § 2607(a), prohibits the giving and accepting of any fee, kickback or thing of value pursuant to an agreement or understanding, oral or otherwise, that business incident to or part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person;

WHEREAS, 24 C.F.R. § 3500.14 sets forth the implementing regulations for RESPA Section 8(a) and 24 C.F.R. § 3500.15 sets forth the requirements for affiliated business arrangements;

WHEREAS, HUD's Statement of Policy 1996-2 sets forth the factors that the Department uses to determine whether an affiliated business arrangement constitutes a bona fide provider of settlement services under RESPA;

WHEREAS, Section 9 of RESPA, 12 U.S.C. § 2608, prohibits the seller of property that will be purchased with the assistance of a federally related mortgage loan from requiring directly or indirectly, as a condition to selling the property, that the title insurance covering the property be purchased by the buyer from any particular title company;

WHEREAS, the Department has conducted an investigation into the Respondents' business practices;

WHEREAS, the Respondents cooperated with HUD's investigation;

WHEREAS, the Department has determined that Grand Homes is a builder of homes in Texas and serves as a general partner in a number of builder limited partnerships in Texas;

WHEREAS, Grand Title operates as a title agency in Texas and is in an affiliated business relationship with Grand Homes;

WHEREAS, the Department alleges that Grand Title did not operate as a bona fide independent title company;

WHEREAS, the Department has determined that Grand Homes, directly or indirectly, referred purchasers to Grand Title while failing to provide the purchasers with Affiliated Business Arrangement Disclosure Statements and required the use of Grand Title for the title insurance. Grand Homes began providing purchasers with Affiliated Business Arrangement Disclosure Statements in 2004;

WHEREAS, the Department alleges that the Respondents' conduct amounted to a violation of Sections 8(a) and 9 of RESPA;

WHEREAS, it is the position of the Respondents that their activities and operations, including without limitation the activities and operations of Grand Title, were in compliance with RESPA;

WHEREAS, Grand Homes represents that the operation of its affiliated mortgage company, GLG Mortgage LP, was voluntarily terminated in 2006 for independent business reasons. HUD has made no determination of the basis of this termination;

WHEREAS, the Parties desire to avoid prolonged proceedings, any further expense of investigation and/or possible litigation, and to finally resolved this matter under the terms and conditions set forth below; and

WHEREAS, the terms set forth in this Settlement Agreement are an appropriate disposition of this matter and in the public interest.

## **AGREEMENTS**

NOW THEREFORE, in consideration of the mutual promises and representations set forth herein, and in further consideration for HUD's reliance upon the substantial accuracy and good faith of the representations and submissions made to it by the Respondents, HUD and the Respondents, intending to be legally bound, agree as follows:

1. The "Effective Date" of this Settlement Agreement means the date on which it has been signed by HUD.
2. Based on compliance with the Settlement Agreement, the Department will terminate its investigation of the Respondents, and hereby waives, releases, remits, and compromises any and all claims, causes, and actions, direct or indirect, and agrees to take no enforcement action under RESPA or the implementing regulations against the Respondents, their respective subsidiaries, predecessors, successors, assigns, or their respective shareholders,

directors, officers, principals, employees and representatives, with respect to the business practices described in this Settlement Agreement, unless such practices recur.

3. Respondents will fully comply with RESPA and its implementing regulations and statements of policy.
4. Grand Homes will give out to its home purchasers that are referred to Grand Title or any other affiliated company, an Affiliated Business Arrangement Disclosure Statement and will comply with all requirements of 24 C.F.R. § 3500.15.
5. Grand Homes will not require its home purchasers to use Grand Title or any other affiliated title company through contractual agreements, written notice or otherwise, and will provide purchasers with sufficient notice and opportunity to independently select the title insurance company to be used in their purchase transaction; provided that Grand Homes may select Grand Title as the title services provider in cases in which Grand Homes pays the title costs.
6. At all times in the future, Grand Title or any title agency formed, owned, or operated by Respondents, or in which Respondents have any interest (an "Agency"), will be operated in the State of Texas in accordance with the following terms:
  - a. The Agency will have operating capital and net worth (a) sufficient to (i) perform title services in the manner required by the settlement, (ii) pay fair market value for all goods and services received or used and all facilities occupied in its business, (iii) cover potential risk of liability, and (iv) otherwise comply with the settlement, and also (b) consistent with that of independent title agencies in the market area.
  - b. The Agency will manage its own business affairs, and will not be managed or controlled by any other entity or person, except that Respondents and other owners of the Agency shall be entitled to exercise the ownership and control typical for owners and officers of a business entity (including, without limitation, having one or more persons who serve as officers, directors or in a similar capacity with any Respondents also serve as officers, directors or in a similar capacity with the Agency). However, the person or persons performing the day-to-day management and title services will work exclusively for the Agency.
  - c. The Agency will have an office for its use in conducting business that is separate and apart from that of any business partner or other settlement service provider.
  - d. The Agency will pay fair market value for all goods and services it receives or uses and all facilities that it occupies in its business.
  - e. The Agency will be staffed with its own employees who work exclusively for it and who will not be compensated or employed or managed by any other affiliated real estate agent, mortgage broker, title insurance company or homebuilder. This paragraph does not preclude there being one or more persons who serve as officers, directors or in a similar capacity with any Respondents also serve as officers,

directors or in a similar capacity with the Agency in a manner that is consistent with this settlement.

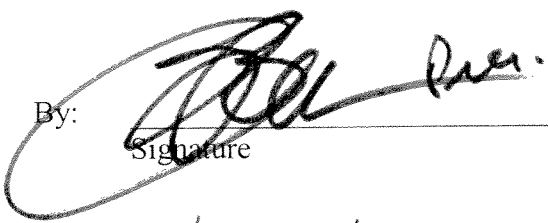
- f. The Agency will employ individuals who are licensed and experienced in the title insurance industry, and through its own employees will provide services for which liability arises, including evaluation of the title search to determine the insurability of title, clearance of underwriting objections, the actual issuance of the title commitment and policy or policies on behalf of the title insurance underwriter, and will otherwise comply with the requirements for title insurance under Texas state law.
  - g. Other than title searches, none of the services referenced in Paragraph f. above, including any evaluation of the title search or the preparation of pro forma or pre-commitment documents evidencing or using the results of the title search, will be conducted or supplied by any other title company or other entity. The Agency will not receive payment for duplicative evaluations performed in full or in part by other title insurance companies. This paragraph does not preclude the Agency from licensing at fair market value software systems for the Agency's use as long as the Agency is the entity performing the evaluation of the title search to determine the insurability of title, clearance of underwriting objections, and the actual issuance of the title commitment and policy or policies on behalf of the title insurance underwriter.
  - h. The Agency will actively compete in the marketplace for title insurance business, offering all the services referenced in Paragraph f. above and will actively market those services and seek title business from parties other than purchasers of properties from Grand Homes and its affiliates and related partnerships and joint ventures.
- 7. Within thirty (30) business days of the Effective Date of this Settlement Agreement, Respondents will make a settlement payment of \$200,000 payable to the U.S. Treasury and delivered to counsel for HUD, such payment shall not be considered for any purposes to be a civil money penalty or fine.
- 8. Nothing in the Settlement Agreement shall be construed as an admission of wrongdoing, liability or legal fault for any conduct underlying the Settlement Agreement, or an admission that any person acted wrongfully.
- 9. Nothing in the Settlement Agreement shall be construed as prohibiting conduct permitted by any future binding appellate level decisions interpreting Section 8 of RESPA, amendments to or repeal of RESPA, or new statutory or regulatory provisions, or HUD policy statements interpreting and applying Section 8 of RESPA.
- 10. Respondents hereby waive, release, remit and compromise any and all claims against the Department, or any of its employees, agents, or representatives, with respect to HUD's investigation of this matter or this Settlement Agreement.

11. This Settlement Agreement applies to and binds the Respondents, their respective subsidiaries, predecessors, successors, assigns, and their respective directors, officers, principals, employees and representatives (in such individuals' official capacities as directors, officers, principals, employees, or representatives of the Respondents).
12. Should the Respondents fail to comply with the terms set out above, or should any of their representations prove to be false or incomplete in any material manner, HUD may take appropriate enforcement action, and/or refer the matter to other governmental authorities for further action.
13. This Settlement Agreement constitutes the complete agreement between the Parties as to the matters addressed herein. This Settlement Agreement may not be amended except by written consent of the Parties.
14. The Parties represent that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.
15. Each of the Parties to this Settlement Agreement shall bear its own attorney's fees and costs, including the preparation and performance of this Settlement Agreement.
16. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute the same agreement.
17. By this Settlement Agreement the Parties do not waive, release, remit or compromise any claims against any other person not expressly released by this Settlement Agreement.
18. Each signatory to this Settlement Agreement certifies by signing that he or she is fully authorized, in her or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Settlement Agreement in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Settlement Agreement.

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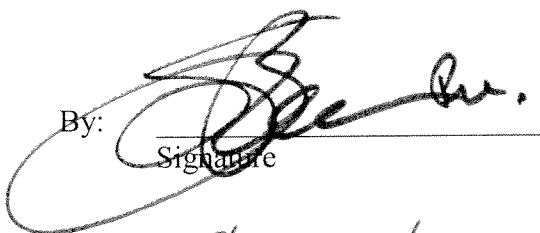
**Grand Texas Homes, Inc.:**

By:   
Signature  
Stephen H. Brooks  
Name printed

Date: 6/24/08

President  
Title

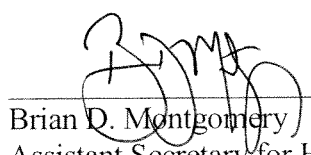
**Grand Title Company, LLC:**

By:   
Signature  
Stephen H. Brooks  
Name printed

Date: 6/24/08

President  
Title

**U.S. Department of Housing and Urban Development:**

By:   
Brian D. Montgomery  
Assistant Secretary for Housing –  
Federal Housing Commissioner

Date: 11/21/08